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Attorneys for Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

E.K. WADE,
Plaintiff,
v.
ELAINE CHAO, SECRETARY OF
LABOR, ET AL.
Defendant.

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Consolidated Case No. C 08-00001 JSW /
EDL

**EXHIBIT B TO THE DECLARATION
OF MELISSA K. BROWN IN SUPPORT
OF THE FEDERAL DEFENDANT'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR SANCTIONS**

Date: September 30, 2008
Time: 3:00 p.m.
Place: Courtroom E, 15th Floor
Honorable Elizabeth Laporte

Date: September 30, 2008
Time: 3:00 p.m.
Place: Courtroom E, 15th Floor
Honorable Elizabeth Laporte

EXHIBIT B



U.S. Department of Justice

United States Attorney
Northern District of California

11th Floor, Federal Building
450 Golden Gate Avenue, Box 36055
San Francisco, California 94102-3495

(415) 436-7200

FAX: (415) 436-7234

July 31, 2008

Via U.S. Mail

E.K. Wade
542 North Civil Drive Apt. D
Walnut Creek CA 94597

Re: E.K. Wade v. Elaine Chao, Secretary of the Department of Labor
USNDC Case No. C-08-0001 JSW

Dear Mr. Wade:

Enclosed please find two boxes of documents bates labeled WADE-CHA00001 - 04145. These documents are being produced in response to Plaintiff's First, Second, and Third Requests for Production and also include documents produced pursuant to Rule 26(a) of the Federal Rules of Civil Procedure. Per our agreement we are producing documents on a rolling basis through September 1, 2008.

Also enclosed please find Defendant's Amended Responses to Plaintiff's Requests for Production Sets One and Two. The Defendant's responses have been amended to reflect production ranges. In addition, please find Defendant's Response to Plaintiff's Requests for Production Set Three.

Please feel free to contact me if you have any questions regarding these documents.

Very truly yours,

JOSEPH P. RUSSONIELLO
United States Attorney

MELISSA K. BROWN
Assistant United States Attorney

Enclosures

cc: Isabella Del Santo (DOL w/o enclosures)

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7 Attorneys for Defendant

8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 E.K. WADE,) Consolidated Case No. C 08-00001 JSW

13 Plaintiff,)
14 v.) THE FEDERAL DEFENDANT'S
15 ELAINE CHAO, SECRETARY OF) AMENDED RESPONSES TO
LABOR, ET AL.) PLAINTIFF'S REQUESTS FOR
16 Defendant.) PRODUCTION SET ONE

19
20 PROPOUNDING PARTY: PLAINTIFF, E.K. WADE

21 RESPONDING PARTY: DEFENDANT ELAINE CHAO, SECRETARY OF THE
22 DEPARTMENT OF LABOR

23 SET NO.: ONE

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, the Defendant Elaine Chao,
 2 Secretary for the Department of Labor (“Defendant”) by and through her attorneys, hereby
 3 objects and responds to the Requests for Production Set One propounded by Plaintiff E.K. Wade
 4 (“Plaintiff”).

5 **PRELIMINARY STATEMENT**

6 1. The Federal Defendant has made a diligent search and reasonable inquiry in an effort to
 7 respond to the Request. However, discovery is continuing and the Federal Defendant’s
 8 investigation into the facts relating to this litigation is ongoing and incomplete. Accordingly, the
 9 Federal Defendant responds to the Request based on the information presently available to it and
 10 without prejudice to its right to amend or supplement its responses and present evidence that may
 11 hereafter be discovered or become available to it.

12 2. Inadvertent production of any document subject to any applicable privilege or
 13 doctrine, including, but not limited to, the deliberative process privilege, the investigative
 14 privilege, the attorney-client privilege and work product doctrine, is not intended to be, and shall
 15 not operate as, a waiver of any such privilege or doctrine, in whole or in part; nor is any such
 16 inadvertent production intended to be, nor shall it constitute, a waiver of the right to object to any
 17 use of such document, or of the information contained therein.

18 3. The Federal Defendant has made reasonable efforts to respond to the Request, to the
 19 extent it has not been objected to, as the Federal Defendant understand and interpret the Request.
 20 If plaintiff subsequently asserts an interpretation of any request that differs from that of the
 21 Federal Defendant, reserves the right to supplement these objections and responses.

22 4. The Federal Defendant’s responses are made without in any way intending to waive or
 23 waiving, but on the contrary, intended to preserve and preserving.

24 (a) The right to raise all questions of authenticity, foundation, relevancy, materiality,
 25 privilege and admissibility as evidence for any purpose of any information identified in response
 26 to the Request that may arise in any subsequent proceeding in, or the trial of, this or any other
 27 action.

28 (b) The right to object to the use of these responses in any subsequent proceeding in, or

1 the trial of, this or any other action on any grounds;

2 (c) The right to object to the introduction into evidence of these responses; and

3 (d) The right to object on any ground at any time to the other requests for production or
4 other discovery involving the subject matter thereof.

5 **GENERAL OBJECTIONS**

6 The Defendant asserts the following objections to each request contained in the Request:

7 A. The Defendant objects to each request to the extent it seeks documents that are not
8 relevant to the claim or defense of any party, or that otherwise exceed the bounds of
9 discovery set forth in Federal Rule of Civil Procedure 26.

10 B. The Defendant objects to each request to the extent it is vague, ambiguous, compound,
11 and/or unintelligible.

12 C. The Defendant objects to each request to the extent it is repetitive, overly broad, and/or
13 unduly burdensome.

14 D. The Defendant objects to each request to the extent it seeks documents protected by any
15 applicable privilege, including attorney-client privilege, government privileges such as
16 the deliberative process privilege, and the work product doctrine.

17 E. The Defendant objects to each request to the extent it seeks documents that are
18 confidential and/or private.

19 F. The Defendant objects to each request to the extent it seeks documents that are protected
20 from disclosure by any applicable statute (including the Privacy Act 5 U.S.C. § 552a),
21 regulation or law, or the Constitution.

22 G. The Defendant objects to each request to the extent it seeks documents not in its
23 possession, custody, or control.

24 H. The Defendant objects to each request to the extent it seeks documents in plaintiff's
25 possession, custody, or control, documents already produced to plaintiff, and/or
26 documents equally available to plaintiff from third parties.

27 I. The Defendant objects to each request to the extent it lacks foundation/assumes facts not
28 in evidence.

- 1 J. The Defendant objects to each request to the extent it calls for a legal conclusion.
- 2 K. By making these responses or agreeing to produce any documents, the Defendant does not
3 concede the documents are discoverable or the request is proper, or that the information
4 sought is relevant. Further, by stating in these responses that they will produce
5 documents, the Defendant does not represent that any document actually exists, but rather
6 that the Defendant will make a reasonable, good faith search and attempt to ascertain
7 whether any responsive documents do, in fact, exist.
- 8 L. The Defendant reserves the right to amend or supplement these responses.
- 9 M. Except for explicit facts admitted herein, no admissions of any nature whatsoever are
10 implied or should be inferred from these objections and responses.
- 11 N. The Defendant incorporates all of the above objections into each response below. By
12 raising any similar or different objections below, the Federal Defendant does not waive
13 any of its general objections.

14 **CONDITIONS**

- 15 1. This response is made without in any way waiving or intending to waive, but on the
16 contrary, intending to preserve:
- 17 a) All objections as to competency, relevancy, materiality, privilege and
18 admissibility as evidence for any purpose in subsequent proceedings or the trial of this or any
19 other actions;
- 20 b) The right to object to the use of any information which may be provided, or the
21 subject matter thereof, in any subsequent proceedings or the trial of this or any other action on
22 any other grounds;
- 23 c) The right to object on any ground at any time to further discovery proceedings
24 involving or relating to the subject matter of these requests; and
- 25 d) The right at any time to revise, correct, supplement, clarify or amend this response
26 in accordance with the Federal Rules of Civil Procedure.

- 27 2. All responses to Requests for Production are based on Defendant's best understanding of
28 the Requests and/or the terms used therein. Such responses cannot properly be used as evidence

1 except in the context in which the Defendant understood the Requests and/or the terms used
 2 therein.

3 3. These responses are not a representation or concession as to the relevance and/or
 4 relationship of the information to this action.

5 **RESPONSES TO DOCUMENT REQUESTS**

6 **DOCUMENT REQUEST NO. 1:**

7 Provide a copy (electronic or paper) of Compliance Officer (CO) Jesus Alvarez's email, dated on
 8 or about July 25, 2001, sent to Plaintiff and staff members, which was the basis for Plaintiff's
 9 blowing the whistle on CO Alvarez.

10 **RESPONSE TO REQUEST NO.1 :**

11 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 12 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 13 The Defendant objects to this document request to the extent it assumes the existence of certain
 14 facts and legal conclusions by responding to this request; the Defendant does not concede any
 15 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 16 extent it seeks information protected by the attorney-client privilege, work product protection,
 17 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 18 the extent it seeks information protected by the Privacy Act.

19 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 20 extent such documents exist, the Defendant is in the process of gathering discovery responsive to
 21 this request.

22 **DOCUMENT REQUEST NO. 2:**

23 Provide a copy (electronic or paper) of District Director Angel Luevano's and Assistant District
 24 Director (ADD) Georgia Martin's memo to Plaintiff, dated on or about October 10, 2001, forcing
 25 Plaintiff to move to a cubicle with his back to ALL other personnel because Linda B. Smith
 26 feared Plaintiff's disability status of Post Traumatic Stress Disorder (PTSD).

27 **RESPONSE TO REQUEST NO.2 :**

28 The Defendant hereby incorporates the General Objections as if fully stated herein. The

1 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 2 The Defendant objects to this document request to the extent it assumes the existence of certain
 3 facts and legal conclusions by responding to this request; the Defendant does not concede any
 4 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 5 extent it seeks information protected by the attorney-client privilege, work product protection,
 6 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 7 the extent it seeks information protected by the Privacy Act.

8 Without waiving any of the foregoing objections the Defendant responds as follows: The
 9 Defendant contends that no such documents exist as characterized or described by Plaintiff. By
 10 responding to this request Defendant does not concede any legal or factual conclusions asserted
 11 in the request. Further, Defendant is still in the process of gathering discovery responsive to this
 12 request; see WADE-CHAO00263-265.

13 **DOCUMENT REQUEST NO. 3:**

14 Provide a copy (electronic or paper) of CO Linda B. Smith's letter/memo to management
 15 regarding the incident with Plaintiff, on or about October 5, 2001, where CO Smith stated her
 16 reasons for requesting Plaintiff's forced relocation, which included her fears of Plaintiff's
 17 disability.

18 **RESPONSE TO REQUEST NO.3 :**

19 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 20 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 21 The Defendant objects to this document request to the extent it assumes the existence of certain
 22 facts and legal conclusions by responding to this request; the Defendant does not concede any
 23 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 24 extent it seeks information protected by the attorney-client privilege, work product protection,
 25 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 26 the extent it seeks information protected by the Privacy Act.

27 Without waiving any of the foregoing objections the Defendant responds as follows: The
 28 Defendant contends that no such documents exist as characterized or described by Plaintiff. By

1 responding to this request Defendant does not concede any legal or factual conclusions asserted
 2 in the request. Further, Defendant is still in the process of gathering discovery responsive to this
 3 request; see WADE-CHAO 00WADE-CHAO00263-265, see also Formal Reappraisal and EEOC.

4 **DOCUMENT REQUEST NO. 4:**

5 Provide a copy (electronic or paper) of Plaintiff's Chronology Log for Blood Services Co., 1125
 6 Terminal Way, Reno, Nevada, dated January 4, 2002, which should be in Blood Services' file, to
 7 show that Plaintiff conducted a simple Compliance Check outside an area of 300 miles in
 8 retaliation for Plaintiff filing a grievance dated November 27, 2001, wherein Plaintiff alleged that
 9 he was not given opportunities to work cases outside of California.

10 **RESPONSE TO REQUEST NO.4 :**

11 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 12 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 13 The Defendant objects to this document request to the extent it assumes the existence of certain
 14 facts and legal conclusions by responding to this request; the Defendant does not concede any
 15 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 16 extent it seeks information protected by the attorney-client privilege, work product protection,
 17 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 18 the extent it seeks information protected by the Privacy Act.

19 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 20 extent such documents exist, the Defendant is in the process of gathering discovery responsive to
 21 this request.

22
 23 **DOCUMENT REQUEST NO. 5:**

24 Provide a copy (electronic or paper) of Regional Director (RD) Woody Gilliland's moratorium to
 25 ALL District Offices on assignments of single Compliance Checks dated just after January 4,
 26 2002.

27 **RESPONSE TO REQUEST NO.5 :**

28 The Defendant hereby incorporates the General Objections as if fully stated herein. The

1 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 2 The Defendant objects to this document request to the extent it assumes the existence of certain
 3 facts and legal conclusions by responding to this request; the Defendant does not concede any
 4 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 5 extent it seeks information protected by the attorney-client privilege, work product protection,
 6 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 7 the extent it seeks information protected by the Privacy Act.

8 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 9 extent such documents exist, the Defendant is in the process of gathering discovery responsive to
 10 this request.

11 **DOCUMENT REQUEST NO. 6:**

12 Provide a copy (electronic or paper) and a list of ALL COs (Region wide), by name, date, Grade,
 13 race, disability, age, and location, that have conducted a single Compliance Check that was
 14 located beyond 300 miles.

15 **RESPONSE TO REQUEST NO. 6:**

16 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 17 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 18 The Defendant objects to this document request to the extent it assumes the existence of certain
 19 facts and legal conclusions by responding to this request; the Defendant does not concede any
 20 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 21 extent it seeks information protected by the attorney-client privilege, work product protection,
 22 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 23 the extent it seeks information protected by the Privacy Act.

24 Without waiving any of the foregoing objections the Defendant responds as follows: This
 25 request is overbroad and unduly burdensome because it is not limited in scope by time. Further
 26 the Defendant will not provide confidential personnel information such as names or identities of
 27 persons other than Plaintiff. Accordingly, the Defendant will not produce documents responsive
 28 to this request at this time.

DOCUMENT REQUEST NO. 7:

Provide a copy (electronic or paper) and a list of ALL Complaint Investigations available to Plaintiff from December 2000 to October 2001, to include the names of those COs to whom the cases were assigned.

RESPONSE TO REQUEST NO.7 :

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: The Defendant will not provide the confidential personnel information of persons other than Plaintiff. The Defendant is in the process of gathering information responsive to this request.

DOCUMENT REQUEST NO. 8:

Provide a copy (electronic or paper) of RD Gilliland's in-house investigation of Plaintiff, dated between March and June 2002, which ultimately delayed Plaintiff's timely promotion to GS-11.

RESPONSE TO REQUEST NO.8 :

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: The Defendant contends that no such documents exist as characterized by Plaintiff and by responding to this request does not concede any legal or factual conclusions see GS-11, Feedback, Training.

DOCUMENT REQUEST NO. 9:

Provide documentation (electronic or paper) to demonstrate that Defendant investigated Plaintiff's Congressional Inquiry to Congressman John Doolittle, dated May 19, 2002.

RESPONSE TO REQUEST NO.9 :

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: The Defendant is in the process of determining whether any such documents exist and whether such documents are covered by privilege. To the extent such documents exist and are not covered by a privilege they will be produced.

DOCUMENT REQUEST NO. 10:

Provide documentation (electronic or paper)/notes, etc.) of DD Luevano's, ADD Martin's, Cindi Adams' and Plaintiff's meeting, dated on or about June 28, 2002, wherein DD Luevano and ADD Martin admitted that paperwork for Plaintiff's "phantom" promotion to GS-11 had not been processed - pending RD Gilliland's in-house investigation of Plaintiff.

RESPONSE TO REQUEST NO. 10:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain

1 facts and legal conclusions by responding to this request; the Defendant does not concede any
 2 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 3 extent it seeks information protected by the attorney-client privilege, work product protection,
 4 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 5 the extent it seeks information protected by the Privacy Act.

6 Without waiving any of the foregoing objections the Defendant responds as follows: The
 7 Defendant contends that no such documents exist as characterized by Plaintiff and by responding
 8 to this request does not concede any legal or factual conclusions see Step 1, Step 2, GS-11,
 9 Feedback.

10 **DOCUMENT REQUEST NO. 11:**

11 Provide documentation (electronic or paper) of Defendant's Final Decision regarding Plaintiff's
 12 Step 1 and Step 2 Grievance, dated on or about July - September 2002.

13 **RESPONSE TO REQUEST NO.11 :**

14 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 15 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 16 The Defendant objects to this document request to the extent it assumes the existence of certain
 17 facts and legal conclusions by responding to this request; the Defendant does not concede any
 18 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 19 extent it seeks information protected by the attorney-client privilege, work product protection,
 20 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 21 the extent it seeks information protected by the Privacy Act. .

22 Without waiving any of the foregoing objections the Defendant responds as follows: The
 23 Defendant contends that no such documents exist as characterized by Plaintiff and by responding
 24 to this request does not concede any legal or factual conclusions see Step 1, Step 2, GS-11,
 25 Feedback.

26 **DOCUMENT REQUEST NO. 12:**

27 Provide documentation (electronic or paper) of Defendant's Final Decision regarding back pay
 28 and arrearage in Step 1 and Step 2 Grievance, dated on or about July - September 2002.

RESPONSE TO REQUEST NO.12 :

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: The Defendant contends that no such documents exist as characterized by Plaintiff and by responding to this request does not concede any legal or factual conclusions see Step 1, Step 2, GS-11, Feedback.

DOCUMENT REQUEST NO. 13:

Provide a copy (electronic or paper) of Plaintiff's email to DRD Smitherman with a carbon to ADD Martin and Plaintiff's union representative - Cindi Adams, dated June 2, 2003, regarding Plaintiff's upcoming promotion to GS-12, scheduled for July 16, 2003.

RESPONSE TO REQUEST NO. 13:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: To the extent such documents exist, the Defendant is in the process of gathering documents responsive

1 to this request. See GS-12, EEOC, Litigation.

2 **DOCUMENT REQUEST NO. 14:**

3 Provide copies (electronic or paper) of notes, emails, memos, etc. between ADD Martin and
 4 DRD Smitherman wherein they denied Plaintiff his timely promotion to GS-12, dated between
 5 July 16, 2003 and August 5, 2003, and alleged that Plaintiff lacked statistical analysis writing
 6 skills, to include notes where DRD Smitherman promised Plaintiff statistical analysis training
 7 within two months of August 2003.

8 **RESPONSE TO REQUEST NO. 14:**

9 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 10 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 11 The Defendant objects to this document request to the extent it assumes the existence of certain
 12 facts and legal conclusions by responding to this request; the Defendant does not concede any
 13 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 14 extent it seeks information protected by the attorney-client privilege, work product protection,
 15 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 16 the extent it seeks information protected by the Privacy Act.

17 Without waiving any of the foregoing objections the Defendant responds as follows: The
 18 Defendant contends that no such documents exist as characterized by Plaintiff and by responding
 19 to this request does not concede any legal or factual conclusions see GS-11, GS-12, Feedback
 20 and traning.

21 **DOCUMENT REQUEST NO. 15:**

22 Provide copies (electronic or paper) of ALL of Plaintiff's Notification of Personnel Action
 23 Standard Form 50 from October 5, 2001 to October 11, 2004, to include whether or not Plaintiff
 24 met the standards.

25 **RESPONSE TO REQUEST NO. 15:**

26 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 27 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 28 The Defendant objects to this document request to the extent it assumes the existence of certain

1 facts and legal conclusions by responding to this request; the Defendant does not concede any
 2 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 3 extent it seeks information protected by the attorney-client privilege, work product protection,
 4 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 5 the extent it seeks information protected by the Privacy Act.

6 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 7 extent such documents exist, the Defendant is in the process of gathering documents responsive
 8 to this request.

9 **DOCUMENT REQUEST NO. 16:**

10 From January 1995 to December 2005, provide copies (electronic or paper) and a list of ALL
 11 COs' (Region wide) Notification of Personnel Action Standard Form 50 by name, Grade, Race,
 12 Disability, age, anniversary dates, and whether they met the standards or not.

13 **RESPONSE TO REQUEST NO.16 :**

14 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 15 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 16 The Defendant objects to this document request to the extent it assumes the existence of certain
 17 facts and legal conclusions by responding to this request; the Defendant does not concede any
 18 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 19 extent it seeks information protected by the attorney-client privilege, work product protection,
 20 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 21 the extent it seeks information protected by the Privacy Act.

22 Without waiving any of the foregoing objections the Defendant responds as follows: This
 23 request is overbroad in scope because it covers a ten year time period not at issue in this
 24 complaint. Further, the Defendant will not produce the confidential personnel information of
 25 persons other than Plaintiff.

26 **DOCUMENT REQUEST NO. 17:**

27 From January 1995 to December 2005, provide copies (electronic or paper) and a list of ALL
 28 COs' (Region wide) untimely merit-pay promotions by name, Grade, race, disability, age,

1 promotion dates, and anniversary dates.

2 **RESPONSE TO REQUEST NO. 17:**

3 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 4 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 5 The Defendant objects to this document request to the extent it assumes the existence of certain
 6 facts and legal conclusions by responding to this request; the Defendant does not concede any
 7 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 8 extent it seeks information protected by the attorney-client privilege, work product protection,
 9 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 10 the extent it seeks information protected by the Privacy Act.

11 Without waiving any of the foregoing objections the Defendant responds as follows: This
 12 request is overbroad in scope because it covers a ten year time period not at issue in this
 13 complaint. Further, the Defendant will not produce the confidential personnel information of
 14 persons other than Plaintiff.

15 **DOCUMENT REQUEST NO. 18:**

16 Provide copies (electronic or paper) of ANY letters, emails, or memos of DRD Smitherman's or
 17 ADD Martin's reply to Plaintiff's letter demanding promotion to GS-12, dated January 13, 2004.

18 **RESPONSE TO REQUEST NO. 18:**

19 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 20 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 21 The Defendant objects to this document request to the extent it assumes the existence of certain
 22 facts and legal conclusions by responding to this request; the Defendant does not concede any
 23 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 24 extent it seeks information protected by the attorney-client privilege, work product protection,
 25 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 26 the extent it seeks information protected by the Privacy Act.

27 Without waiving any of the foregoing objections the Defendant responds as follows: The
 28 Defendant contends that no such documents exist as characterized by Plaintiff and by responding

1 to this request does not concede any legal or factual conclusions see GS-12.

2 **DOCUMENT REQUEST NO. 19:**

3 Provide copies (electronic or paper) of Plaintiff's medical disability, dated February 22, 2004.

4 **RESPONSE TO REQUEST NO. 19:**

5 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 6 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 7 The Defendant objects to this document request to the extent it assumes the existence of certain
 8 facts and legal conclusions by responding to this request; the Defendant does not concede any
 9 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 10 extent it seeks information protected by the attorney-client privilege, work product protection,
 11 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 12 the extent it seeks information protected by the Privacy Act.

13 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 14 extent such documents exist, the Defendant is in the process of gathering documents responsive
 15 to this request.

16 **DOCUMENT REQUEST NO. 20:**

17 Provide copies (electronic or paper) of Plaintiff's claim for Workers' Compensation, dated
 18 February 25, 2004, which was later denied on March 10, 2004.

19 **RESPONSE TO REQUEST NO. 20:**

20 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 21 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 22 The Defendant objects to this document request to the extent it assumes the existence of certain
 23 facts and legal conclusions by responding to this request; the Defendant does not concede any
 24 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 25 extent it seeks information protected by the attorney-client privilege, work product protection,
 26 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 27 the extent it seeks information protected by the Privacy Act.

28 Without waiving any of the foregoing objections the Defendant responds as follows: The

1 Defendant is still in the process of gather information responsive to these document requests.
 2 Please see document division Worker's Compensation, - WADE-CHAO00136-151, WADE-
 3 CHAO00381-388, WADE-CHAO00438-461.

4 **DOCUMENT REQUEST NO. 21:**

5 Provide copies (electronic or paper) of RD Gilliland's grant of 80 hours of Advanced Sick Leave
 6 to Plaintiff, dated March 24, 2004.

7 **RESPONSE TO REQUEST NO. 21:**

8 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 9 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 10 The Defendant objects to this document request to the extent it assumes the existence of certain
 11 facts and legal conclusions by responding to this request; the Defendant does not concede any
 12 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 13 extent it seeks information protected by the attorney-client privilege, work product protection,
 14 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 15 the extent it seeks information protected by the Privacy Act.

16 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 17 extent such documents exist, the Defendant is in the process of gathering documents responsive
 18 to this request. Please see the following bates ranges: WADE-CHAO000244, WADE-
 19 CHAO000273-283, WADE-CHAO000405-414, WADE-CHAO000417-426, WADE-
 20 CHAO001020-1048, WADE-CHAO001242-44, see also division Sick Leave.

21 **DOCUMENT REQUEST NO. 22:**

22 Provide copies (electronic or paper) of RD Gilliland's denial of Plaintiff's request for the
 23 available 160 hours of Advanced Sick Leave, dated May 6, 2004.

24 **RESPONSE TO REQUEST NO. 22 :**

25 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 26 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 27 The Defendant objects to this document request to the extent it assumes the existence of certain
 28 facts and legal conclusions by responding to this request; the Defendant does not concede any

1 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 2 extent it seeks information protected by the attorney-client privilege, work product protection,
 3 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 4 the extent it seeks information protected by the Privacy Act.

5 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 6 extent such documents exist, the Defendant is in the process of gathering documents responsive
 7 to this request. Please see the following bates ranges: WADE-CHAO000244, WADE-
 8 CHAO000273-283, WADE-CHAO000405-414, WADE-CHAO000417-426, WADE-
 9 CHAO001020-1048, WADE-CHAO001242-44, see also division Sick Leave.

10 **DOCUMENT REQUEST NO. 23:**

11 From January 1995 to December 2005, provide copies (electronic or paper) of and a list of ALL
 12 COs (Region wide), by name, Grade, race, disability, age, and disposition (granted or denied),
 13 that have requested Advanced Sick Leave, to include the number of hours.

14 **RESPONSE TO REQUEST NO.23 :**

15 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 16 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 17 The Defendant objects to this document request to the extent it assumes the existence of certain
 18 facts and legal conclusions by responding to this request; the Defendant does not concede any
 19 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 20 extent it seeks information protected by the attorney-client privilege, work product protection,
 21 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 22 the extent it seeks information protected by the Privacy Act.

23 Without waiving any of the foregoing objections the Defendant responds as follows: This
 24 request is overbroad in scope because it covers a ten year time period not at issue in this
 25 complaint. Further, the Defendant will not produce the confidential personnel information of
 26 persons other than Plaintiff.

27 **DOCUMENT REQUEST NO. 24:**

28 Provide copies (electronic or paper) of ADD Alice Young's paperwork that she processed for

1 Plaintiff's request for reasonable accommodations, dated May 6, 2004.

2 **RESPONSE TO REQUEST NO. 24:**

3 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 4 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 5 The Defendant objects to this document request to the extent it assumes the existence of certain
 6 facts and legal conclusions by responding to this request; the Defendant does not concede any
 7 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 8 extent it seeks information protected by the attorney-client privilege, work product protection,
 9 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 10 the extent it seeks information protected by the Privacy Act.

11 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 12 extent such documents exist, the Defendant is in the process of gathering documents responsive
 13 to this request. Please see the following bates ranges: WADE-CHAO000244, WADE-
 14 CHAO000273-283, WADE-CHAO000405-414, WADE-CHAO000417-426, WADE-
 15 CHAO001020-1048, WADE-CHAO001242-44, see also division Sick Leave.

16 **DOCUMENT REQUEST NO. 25:**

17 From January 1995 to December 2005, provide copies (electronic or paper) of and a list of ALL
 18 COs (Region wide), by name, Grade, race, disability, age, and disposition (granted or denied) -
 19 with reasons, that have requested reasonable accommodations.

20 **RESPONSE TO REQUEST NO. 25:**

21 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 22 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 23 The Defendant objects to this document request to the extent it assumes the existence of certain
 24 facts and legal conclusions by responding to this request; the Defendant does not concede any
 25 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 26 extent it seeks information protected by the attorney-client privilege, work product protection,
 27 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 28 the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: This request is overbroad in scope because it covers a ten year time period not at issue in this complaint. Further, the Defendant will not produce the confidential personnel information of persons other than Plaintiff.

DOCUMENT REQUEST NO. 26:

Provide documentation (electronic or paper) to demonstrate that Defendant investigated Plaintiff's Congressional Inquiry with Congresswoman Ellen Tauscher on May 6, 2004.

RESPONSE TO REQUEST NO. 26:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: To the extent such documents exist, and are in the possession, custody, or control of the Defendant and are not privileged, the Defendant is in the process of gathering documents responsive to this request.

DOCUMENT REQUEST NO. 27:

Provide documentation (electronic or paper) to demonstrate that Defendant investigated Plaintiff's complaint with the Office of Special Counsel (OSC), alleging discrimination and reprisals for whistle blowing and filing numerous EEO complaints, dated May 6, 2004.

RESPONSE TO REQUEST NO. 27 :

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain

1 facts and legal conclusions by responding to this request; the Defendant does not concede any
 2 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 3 extent it seeks information protected by the attorney-client privilege, work product protection,
 4 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 5 the extent it seeks information protected by the Privacy Act.

6 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 7 extent such documents exist, and are in the possession, custody, or control of the Defendant and
 8 are not privileged, the Defendant is in the process of gathering documents responsive to this
 9 request.

10 **DOCUMENT REQUEST NO. 28:**

11 From January 1995 to December 2005, provide copies (electronic or paper) of and a list of ALL
 12 COs' (Region wide) EEO complaints/grievances filed by name, Grade, race, disability, age, basis,
 13 and disposition (arbitrated, litigated, settled, etc.).

14 **RESPONSE TO REQUEST NO. 28:**

15 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 16 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 17 The Defendant objects to this document request to the extent it assumes the existence of certain
 18 facts and legal conclusions by responding to this request; the Defendant does not concede any
 19 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 20 extent it sees' s information protected by the attorney-client privilege, work product protection.
 21 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 22 the extent it seeks information protected by the Privacy Act.

23 Without waiving any of the foregoing objections the Defendant responds as follows: This
 24 request is overbroad in scope because it covers a ten year time period not at issue in this
 25 complaint. Further, the Defendant will not produce the confidential personnel information of
 26 persons other than Plaintiff.

27 **DOCUMENT REQUEST NO. 29:**

28 Provide documentation (electronic or paper) to show that Defendant investigated

1 Plaintiff's appeal to Director James for Advanced Sick Leave, dated May 14, 2004.

2 **RESPONSE TO REQUEST NO. 29:**

3 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 4 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 5 The Defendant objects to this document request to the extent it assumes the existence of certain
 6 facts and legal conclusions by responding to this request; the Defendant does not concede any
 7 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 8 extent it seeks information protected by the attorney-client privilege, work product protection,
 9 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 10 the extent it seeks information protected by the Privacy Act.

11 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 12 extent such documents exist, and are in the possession, custody, or control of the Defendant and
 13 are not privileged, the Defendant is in the process of gathering documents responsive to this
 14 request.

15 **DOCUMENT REQUEST NO. 30:**

16 Provide documentation (electronic or paper) of Director Charles James's phone records, dated on
 17 or about May 17, 2004, to corroborate that Director James called Plaintiff at his cell phone
 18 number (925) 323-1578.

19 **RESPONSE TO REQUEST NO. 30 :**

20 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 21 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 22 The Defendant objects to this document request to the extent it assumes the existence of certain
 23 facts and legal conclusions by responding to this request; the Defendant does not concede any
 24 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 25 extent it seeks information protected by the attorney-client privilege, work product protection,
 26 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 27 the extent it seeks information protected by the Privacy Act.

28

1 Without waiving any of the foregoing objections the Defendant responds as follows: To the
2 extent responsive documents exist and are in the possession, custody or control of the Defendant
3 these documents are being gathered for production.

4

5 DATED: July 31, 2008 Respectfully submitted,

6 JOSEPH P. RUSSONIELLO
United States Attorney

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9 MELISSA K. BROWN
Assistant United States Attorney

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9
10
11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 E.K. WADE,) Consolidated Case No. C 08-00001 JSW
15 Plaintiff,)
16 v.) THE FEDERAL DEFENDANT'S
17) AMENDED RESPONSES TO
18) PLAINTIFF'S REQUESTS FOR
19) PRODUCTION SET TWO
20)
21)
22)
23)
24)
25)
26)
27)
28)
ELAINE CHAO, SECRETARY OF)
LABOR, ET AL.)
Defendant.)
PROPOUNDING PARTY: PLAINTIFF, E.K. WADE
RESPONDING PARTY: DEFENDANT ELAINE CHAO, SECRETARY OF THE
DEPARTMENT OF LABOR
SET NO.: TWO

1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, the Defendant Elaine Chao,
 2 Secretary for the Department of Labor ("Defendant") by and through her attorneys, hereby
 3 objects and responds to the Requests for Production Set Two propounded by Plaintiff E.K. Wade
 4 ("Plaintiff").

5 **PRELIMINARY STATEMENT**

6 1. The Federal Defendant has made a diligent search and reasonable inquiry in an effort to
 7 respond to the Request. However, discovery is continuing and the Federal Defendant's
 8 investigation into the facts relating to this litigation is ongoing and incomplete. Accordingly, the
 9 Federal Defendant responds to the Request based on the information presently available to it and
 10 without prejudice to its right to amend or supplement its responses and present evidence that may
 11 hereafter be discovered or become available to it.

12 2. Inadvertent production of any document subject to any applicable privilege or
 13 doctrine, including, but not limited to, the deliberative process privilege, the investigative
 14 privilege, the attorney-client privilege and work product doctrine, is not intended to be, and shall
 15 not operate as, a waiver of any such privilege or doctrine, in whole or in part; nor is any such
 16 inadvertent production intended to be, nor shall it constitute, a waiver of the right to object to any
 17 use of such document, or of the information contained therein.

18 3. The Federal Defendant has made reasonable efforts to respond to the Request, to the
 19 extent it has not been objected to, as the Federal Defendant understand and interpret the Request.
 20 If plaintiff subsequently asserts an interpretation of any request that differs from that of the
 21 Federal Defendant, reserves the right to supplement these objections and responses.

22 4. The Federal Defendant's responses are made without in any way intending to waive or
 23 waiving, but on the contrary, intended to preserve and preserving:

24 (a) The right to raise all questions of authenticity, foundation, relevancy, materiality,
 25 privilege and admissibility as evidence for any purpose of any information identified in response
 26 to the Request that may arise in any subsequent proceeding in, or the trial of, this or any other
 27 action.

28 (b) The right to object to the use of these responses in any subsequent proceeding in, or

1 the trial of, this or any other action on any grounds;

2 (c) The right to object to the introduction into evidence of these responses; and

3 (d) The right to object on any ground at any time to the other requests for production or
4 other discovery involving the subject matter thereof.

5 **GENERAL OBJECTIONS**

6 The Defendant asserts the following objections to each request contained in the Request:

7 A. The Defendant objects to each request to the extent it seeks documents that are not
8 relevant to the claim or defense of any party, or that otherwise exceed the bounds of
9 discovery set forth in Federal Rule of Civil Procedure 26.

10 B. The Defendant objects to each request to the extent it is vague, ambiguous, compound,
11 and/or unintelligible.

12 C. The Defendant objects to each request to the extent it is repetitive, overly broad, and/or
13 unduly burdensome.

14 D. The Defendant objects to each request to the extent it seeks documents protected by any
15 applicable privilege, including attorney-client privilege, government privileges such as
16 the deliberative process privilege, and the work product doctrine.

17 E. The Defendant objects to each request to the extent it seeks documents that are
18 confidential and/or private.

19 F. The Defendant objects to each request to the extent it seeks documents that are protected
20 from disclosure by any applicable statute (including the Privacy Act 5 U.S.C. § 552a),
21 regulation or law, or the Constitution.

22 G. The Defendant objects to each request to the extent it seeks documents not in its
23 possession, custody, or control.

24 H. The Defendant objects to each request to the extent it seeks documents in plaintiff's
25 possession, custody, or control, documents already produced to plaintiff, and/or
26 documents equally available to plaintiff from third parties.

27 I. The Defendant objects to each request to the extent it lacks foundation/assumes facts not
28 in evidence.

- 1 J. The Defendant objects to each request to the extent it calls for a legal conclusion.
- 2 K. By making these responses or agreeing to produce any documents, the Defendant does not
3 concede the documents are discoverable or the request is proper, or that the information
4 sought is relevant. Further, by stating in these responses that they will produce
5 documents, the Defendant does not represent that any document actually exists, but rather
6 that the Defendant will make a reasonable, good faith search and attempt to ascertain
7 whether any responsive documents do, in fact, exist.
- 8 L. The Defendant reserves the right to amend or supplement these responses.
- 9 M. Except for explicit facts admitted herein, no admissions of any nature whatsoever are
10 implied or should be inferred from these objections and responses.
- 11 N. The Defendant incorporates all of the above objections into each response below. By
12 raising any similar or different objections below, the Federal Defendant does not waive
13 any of its general objections.

14 **CONDITIONS**

- 15 1. This response is made without in any way waiving or intending to waive, but on the
16 contrary, intending to preserve:
- 17 a) All objections as to competency, relevancy, materiality, privilege and
18 admissibility as evidence for any purpose in subsequent proceedings or the trial of this or any
19 other actions;
- 20 b) The right to object to the use of any information which may be provided, or the
21 subject matter thereof, in any subsequent proceedings or the trial of this or any other action on
22 any other grounds;
- 23 c) The right to object on any ground at any time to further discovery proceedings
24 involving or relating to the subject matter of these requests; and
- 25 d) The right at any time to revise, correct, supplement, clarify or amend this response
26 in accordance with the Federal Rules of Civil Procedure.
- 27 2. All responses to Requests for Production are based on Defendant's best understanding of
28 the Requests and/or the terms used therein. Such responses cannot properly be used as evidence

except in the context in which the Defendant understood the Requests and/or the terms used therein.

3. These responses are not a representation or concession as to the relevance and/or relationship of the information to this action.

RESPONSES TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

Provide documentation (electronic or paper) to demonstrate that Defendant investigated Plaintiff's complaint with the Office of Special Counsel (OSC), alleging reprisals and failure to provide reasonable accommodations, dated May 27, 2004.

RESPONSE TO REQUEST NO.1 :

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: The Defendant is in the process of determining whether any such documents exist and whether such documents are covered by privilege. To the extent such documents exist and are not covered by a privilege they will be produced.

DOCUMENT REQUEST NO. 2:

Provide documentation (electronic or paper) to demonstrate that Defendant investigated Plaintiff's complaint with the Veterans Employment and Training Service (VETS), dated June 5, 2004, alleging violation of Veterans Preference.

RESPONSE TO REQUEST NO. 2:

The Defendant hereby incorporates the General Objections as if fully stated herein. The

1 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 2 The Defendant objects to this document request to the extent it assumes the existence of certain
 3 facts and legal conclusions by responding to this request; the Defendant does not concede any
 4 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 5 extent it seeks information protected by the attorney-client privilege, work product protection,
 6 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 7 the extent it seeks information protected by the Privacy Act.

8 Without waiving any of the foregoing objections the Defendant responds as follows: The
 9 Defendant is in the process of determining whether any such documents exist and whether such
 10 documents are covered by privilege. To the extent such documents exist and are not covered by
 11 a privilege they will be produced.

12 **DOCUMENT REQUEST NO. 3:**

13 Provide documentation (electronic or paper) to demonstrate that ADD Sarah Nelson, DRD
 14 Smitherman, and RD Gilliland received an email from Plaintiff, dated July 23, 2004, where
 15 Plaintiff complained of ADD Nelson's hostility towards Plaintiff.

16 **RESPONSE TO REQUEST NO. 3:**

17 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 18 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 19 The Defendant objects to this document request to the extent it assumes the existence of certain
 20 facts and legal conclusions by responding to this request; the Defendant does not concede any
 21 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 22 extent it seeks information protected by the attorney-client privilege, work product protection,
 23 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 24 the extent it seeks information protected by the Privacy Act.

25 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 26 extent documents responsive to this request exist they will be produced. WADE-CHAO01276.

27 **DOCUMENT REQUEST NO. 4:**

28 Provide documentation (electronic or paper) to demonstrate that Defendant investigated

1 Plaintiff's complaint regarding ADD Nelson's behavior on July 23, 2004.

2 **RESPONSE TO REQUEST NO. 4:**

3 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 4 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 5 The Defendant objects to this document request to the extent it assumes the existence of certain
 6 facts and legal conclusions by responding to this request; the Defendant does not concede any
 7 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 8 extent it seeks information protected by the attorney-client privilege, work product protection,
 9 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 10 the extent it seeks information protected by the Privacy Act.

11 Without waiving any of the foregoing objections the Defendant responds as follows: The
 12 Defendant's search for responsive documents is ongoing however, the Defendant directs Plaintiff
 13 to bates range WADE-CHAO 00058-59.

14 **DOCUMENT REQUEST NO. 5:**

15 Provide documentation (electronic or paper) to demonstrate that Defendant investigated
 16 Plaintiff's complaint to Elaine Chao, dated August 1, 2004, alleging continued harassment,
 17 retaliation, and Plaintiff's begging her to stop ADD Nelson's conduct towards him.

18 **RESPONSE TO REQUEST NO. 5:**

19 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 20 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 21 The Defendant objects to this document request to the extent it assumes the existence of certain
 22 facts and legal conclusions by responding to this request; the Defendant does not concede any
 23 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 24 extent it seeks information protected by the attorney-client privilege, work product protection,
 25 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 26 the extent it seeks information protected by the Privacy Act.

27 Without waiving any of the foregoing objections the Defendant responds as follows: The
 28 Defendant contends that no such documents exist as characterized by Plaintiff however, the

1 Defendant directs Plaintiff to bates range WADE-CHAO001286-1287.

2 **DOCUMENT REQUEST NO. 6:**

3 Provide documentation (electronic or paper) to demonstrate that Plaintiff applied for Disability
4 Retirement, dated August 2, 2004.

5 **RESPONSE TO REQUEST NO. 6:**

6 The Defendant hereby incorporates the General Objections as if fully stated herein. The
7 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
8 The Defendant objects to this document request to the extent it assumes the existence of certain
9 facts and legal conclusions by responding to this request; the Defendant does not concede any
10 facts or legal conclusions stated therein. The Defendant objects to this document request to the
11 extent it seeks information protected by the attorney-client privilege, work product protection,
12 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
13 the extent it seeks information protected by the Privacy Act.

14 Without waiving any of the foregoing objections the Defendant responds as follows: These
15 documents are equally accessible to Plaintiff. To the extent responsive documents exist and are
16 in the possession, custody or control of Defendant these documents will be produced. Please see
17 WADE-CHAO00136-151, WADE-CHAO00381-388, WADE-CHAO00438-461WADE-
18 CHAO03984-3995, WADE-CHAO04004-4057.

19 **DOCUMENT REQUEST NO. 7:**

20 Provide documentation (electronic or paper) to demonstrate that Defendant investigated
21 Plaintiff's complaint to Alfred Nodell, Office of the Inspector General, dated August 28, 2004,
22 alleging hostile work environment, retaliation, discrimination in promotion, and harassment.

23 **RESPONSE TO REQUEST NO. 7:**

24 The Defendant hereby incorporates the General Objections as if fully stated herein. The
25 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
26 The Defendant objects to this document request to the extent it assumes the existence of certain
27 facts and legal conclusions by responding to this request; the Defendant does not concede any
28 facts or legal conclusions stated therein. The Defendant objects to this document request to the

1 extent it seeks information protected by the attorney-client privilege, work product protection,
 2 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 3 the extent it seeks information protected by the Privacy Act.

4 Without waiving any of the foregoing objections the Defendant responds as follows: The
 5 Defendant is in the process of determining whether any such documents exist and whether such
 6 documents are covered by privilege. To the extent such documents exist and are not covered by
 7 a privilege they will be produced. The Defendant's search for responsive documents is ongoing,
 8 however, the Defendant directs Plaintiff to WADE-CHAO01281-1287.

9 **DOCUMENT REQUEST NO. 8:**

10 Provide documentation (electronic or paper) to demonstrate that COs Batiste, Roberts, and
 11 Alvarez arranged a meeting with Plaintiff in the conference room to confront him and oppose his
 12 filing of numerous EEO complaints (i.e., Batiste and Roberts's memos dated September 9th and
 13 10th 2004).

14 **RESPONSE TO REQUEST NO. 8:**

15 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 16 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 17 The Defendant objects to this document request to the extent it assumes the existence of certain
 18 facts and legal conclusions by responding to this request; the Defendant does not concede any
 19 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 20 extent it seeks information protected by the attorney-client privilege, work product protection,
 21 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 22 the extent it seeks information protected by the Privacy Act.

23 Without waiving any of the foregoing objections the Defendant responds as follows: The
 24 Defendant contends that no such documents exist as characterized by Plaintiff. However, the
 25 Defendant directs Plaintiff to bates range WADE-CHAO00097-102; WADE-CHAO01293-1320.

26 **DOCUMENT REQUEST NO. 9:**

27 Provide documentation (electronic or paper) to demonstrate that ADD Nelson and Doug Betten
 28 refused to accept Plaintiff's letter of resignation; and threatened him with Absent Without Leave

1 (AWOL) status if he did not immediately return to work, knowing that Plaintiff had already
 2 removed himself from the premises.

3 **RESPONSE TO REQUEST NO.9 :**

4 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 5 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 6 The Defendant objects to this document request to the extent it assumes the existence of certain
 7 facts and legal conclusions by responding to this request; the Defendant does not concede any
 8 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 9 extent it seeks information protected by the attorney-client privilege, work product protection,
 10 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 11 the extent it seeks information protected by the Privacy Act.

12 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 13 extent responsive documents to this request exist such documents will be produced. The
 14 Defendant is still in the process of searching for and gathering documents responsive to this
 15 request. However, please see WADE-CHAO 002242-43.

16 **DOCUMENT REQUEST NO. 10:**

17 Provide documentation (electronic or paper) to demonstrate that, on October 18, 2004, ADD
 18 Nelson, RD Gilliland, and/or DRD Smitherman contracted with the Federal Protective Services
 19 (FPS) and Homeland Security to physically detain Plaintiff and to physically escort him to and
 20 from his conduction of personal business from October 18, 2004 up to and including December
 21 5, 2005, although he had already resigned his position on October 11, 2004.

22 **RESPONSE TO REQUEST NO.10 :**

23 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 24 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 25 The Defendant objects to this document request to the extent it assumes the existence of certain
 26 facts and legal conclusions by responding to this request; the Defendant does not concede any
 27 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 28 extent it seeks information protected by the attorney-client privilege, work product protection,

1 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 2 the extent it seeks information protected by the Privacy Act.

3 Without waiving any of the foregoing objections the Defendant responds as follows: No such
 4 documents exist as characterized by the Defendant. Defendant did not enter into a "contract"
 5 with FPS and Homeland Security. However the production does include as initial disclosures
 6 documents reflecting communications with FPS.

7 **DOCUMENT REQUEST NO. 11:**

8 Provide a copy of RD Gilliland's grant (via email) of 240 hours of Advanced Sick Leave to CO
 9 Richard Gaytan, dated June 4, 2003.

10 **RESPONSE TO REQUEST NO.11 :**

11 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 12 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 13 The Defendant objects to this document request to the extent it assumes the existence of certain
 14 facts and legal conclusions by responding to this request; the Defendant does not concede any
 15 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 16 extent it seeks information protected by the attorney-client privilege, work product protection,
 17 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 18 the extent it seeks information protected by the Privacy Act.

19 Without waiving any of the foregoing objections the Defendant responds as follows: The
 20 Defendant will not produce confidential personnel documents for persons other than the Plaintiff.

21 **DOCUMENT REQUEST NO. 12:**

22 Provide a copy of and a list of ALL GS-11s (Region wide), from January 1995 to December
 23 2005, by name, Grade, race, disability, age, and disposition (date of promotion), that were
 24 promoted to GS-12 before finding systemic discrimination to include the dates they found and
 25 established systemic discrimination.

26 **RESPONSE TO REQUEST NO.12 :**

27 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 28 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.

1 The Defendant objects to this document request to the extent it assumes the existence of certain
 2 facts and legal conclusions by responding to this request; the Defendant does not concede any
 3 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 4 extent it seeks information protected by the attorney-client privilege, work product protection,
 5 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 6 the extent it seeks information protected by the Privacy Act.

7 Without waiving any of the foregoing objections the Defendant responds as follows: This
 8 request is overbroad in scope because it covers a ten year time period not at issue in this
 9 complaint. Further, the Defendant will not produce the confidential personnel information of
 10 persons other than Plaintiff.

11 **DOCUMENT REQUEST NO. 13:**

12 Provide documentation (electronic or paper) to demonstrate that Defendant offered Plaintiff
 13 reasonable accommodations; and where Plaintiff refused such offer of accommodations.

14 **RESPONSE TO REQUEST NO.13 :**

15 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 16 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 17 The Defendant objects to this document request to the extent it assumes the existence of certain
 18 facts and legal conclusions by responding to this request; the Defendant does not concede any
 19 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 20 extent it seeks information protected by the attorney-client privilege, work product protection,
 21 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 22 the extent it seeks information protected by the Privacy Act.

23 Without waiving any of the foregoing objections the Defendant responds as follows: This
 24 request is vague and ambiguous, subject to the Defendant's interpretation of this request, the
 25 Defendant will produce responsive documents to the extent they exist. The Defendant is still in
 26 the process of searching and gathering documents responsive to Plaintiff's request for
 27 production. However, Defendant directs Plaintiff the following documents: WADE-
 28 CHAO000244, WADE-CHAO000273-283, WADE-CHAO000405-414, WADE-CHAO000417-

1 426, WADE-CHA0001020-1048, WADE-CHA001242-44, see also division Sick Leave.

2 **DOCUMENT REQUEST NO. 14:**

3 Provide a copy of and a list of ALL COs (Region wide, by name, Grade, race, disability, aged,
 4 and destination, that had assignments outside of California (e.g., Nevada, etc.) from December 1,
 5 2000 to November 27, 2001.

6 **RESPONSE TO REQUEST NO. 14:**

7 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 8 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 9 The Defendant objects to this document request to the extent it assumes the existence of certain
 10 facts and legal conclusions by responding to this request; the Defendant does not concede any
 11 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 12 extent it seeks information protected by the attorney-client privilege, work product protection,
 13 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 14 the extent it seeks information protected by the Privacy Act.

15 Without waiving any of the foregoing objections the Defendant responds as follows: This
 16 request is overbroad in scope because it covers a time period not at issue in this complaint.
 17 Further, the Defendant will not produce the confidential personnel information of persons other
 18 than Plaintiff.

19 **DOCUMENT REQUEST NO. 15:**

20 Provide copies (2) (electronic or paper) of Plaintiff's promotion to GS-11, dated April 3, 2002
 21 and July 16, 2002, respectively, which indicates that RD Gilliland withheld Plaintiff's initial
 22 promotion pending RD Gilliland's in-house investigation of Plaintiff.

23 **RESPONSE TO REQUEST NO.15 :**

24 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 25 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 26 The Defendant objects to this document request to the extent it assumes the existence of certain
 27 facts and legal conclusions by responding to this request; the Defendant does not concede any
 28 facts or legal conclusions stated therein. The Defendant objects to this document request to the

1 extent it seeks information protected by the attorney-client privilege, work product protection,
 2 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 3 the extent it seeks information protected by the Privacy Act.

4 Without waiving any of the foregoing objections the Defendant responds as follows: The
 5 Defendant will not provide two copies of any documents responsive to this request to the extent
 6 such documents exist because this is not consistent with the obligations of the Federal Rules of
 7 Civil Procedure. However, to the extent documents responsive to this request exist the
 8 Defendant will produce a copy in accordance with the Federal Rules of Civil Procedure.

9 **DOCUMENT REQUEST NO. 16:**

10 Provide documentation (electronic or paper) to demonstrate that DD Luevano processed
 11 Plaintiff's request for reasonable accommodations, dated August 7, 2002.

12 **RESPONSE TO REQUEST NO. 16:**

13 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 14 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 15 The Defendant objects to this document request to the extent it assumes the existence of certain
 16 facts and legal conclusions by responding to this request; the Defendant does not concede any
 17 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 18 extent it seeks information protected by the attorney-client privilege, work product protection,
 19 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 20 the extent it seeks information protected by the Privacy Act.

21 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 22 extent documents responsive to this request exist they will be produced.

23 **DOCUMENT REQUEST NO. 17:**

24 Provide documentation (electronic or paper) to demonstrate that ADD Martin or DRD
 25 Smitherman replied to Plaintiff's demand for his timely merit-pay promotion to GS-12, dated
 26 January 13, 2004.

27
 28 **RESPONSE TO REQUEST NO.17 :**

1 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 2 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 3 The Defendant objects to this document request to the extent it assumes the existence of certain
 4 facts and legal conclusions by responding to this request; the Defendant does not concede any
 5 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 6 extent it seeks information protected by the attorney-client privilege, work product protection,
 7 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 8 the extent it seeks information protected by the Privacy Act.

9 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 10 extent documents responsive to this request exist they will be produced.

11 **DOCUMENT REQUEST NO. 18:**

12 Provide a copy of Plaintiff's email (electronic or paper) to DRD Smitherman, dated July 22,
 13 2004, with carbons to RD Gilliland, where Plaintiff chronicles ADD Nelson's hostility towards
 14 him.

15 **RESPONSE TO REQUEST NO.18 :**

16 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 17 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 18 The Defendant objects to this document request to the extent it assumes the existence of certain
 19 facts and legal conclusions by responding to this request; the Defendant does not concede any
 20 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 21 extent it seeks information protected by the attorney-client privilege, work product protection,
 22 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 23 the extent it seeks information protected by the Privacy Act.

24 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 25 extent documents responsive to this request exist they will be produced. WADE-CHAO01276.

26 **DOCUMENT REQUEST NO. 19:**

27 From January 1995 to December 2005, provide a copy and a list of ALL COs (Region wide), by
 28 name, Grade, race, disability, age, and disposition (i.e., granted, denied, and reasons), that have

1 requested Advanced Sick Leave.

2 **RESPONSE TO REQUEST NO.19 :**

3 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 4 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 5 The Defendant objects to this document request to the extent it assumes the existence of certain
 6 facts and legal conclusions by responding to this request; the Defendant does not concede any
 7 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 8 extent it seeks information protected by the attorney-client privilege, work product protection,
 9 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 10 the extent it seeks information protected by the Privacy Act. The Defendant further objects to
 11 this request as duplicative and harassing.

12 Without waiving any of the foregoing objections the Defendant responds as follows: This
 13 request is overbroad in scope because it covers a ten year time period not at issue in this
 14 complaint. Further, the Defendant will not produce the confidential personnel information of
 15 persons other than Plaintiff.

16 **DOCUMENT REQUEST NO. 20:**

17 From January 1995 to December 2005, provide a copy and a list of ALL COs (Region wide), by
 18 name, Grade, race, disability, age, and disposition (i.e., granted, denied, and reasons), that have
 19 requested reasonable accommodations.

20 **RESPONSE TO REQUEST NO.20 :**

21 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 22 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 23 The Defendant objects to this document request to the extent it assumes the existence of certain
 24 facts and legal conclusions by responding to this request; the Defendant does not concede any
 25 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 26 extent it seeks information protected by the attorney-client privilege, work product protection,
 27 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 28 the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: This request is overbroad in scope because it covers a ten year time period not at issue in this complaint. Further, the Defendant will not produce the confidential personnel information of persons other than Plaintiff.

DOCUMENT REQUEST NO. 21:

From January 1995 to December 2005, provide a copy and a list of ALL COs (Region wide), by name, Grade, race, disability, age, and location (i.e., city and State trained), that have received systemic discrimination training.

RESPONSE TO REQUEST NO.21 :

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving any of the foregoing objections the Defendant responds as follows: This request is overbroad in scope because it covers a ten year time period not at issue in this complaint. Further, the Defendant will not produce the confidential personnel information of persons other than Plaintiff.

DOCUMENT REQUEST NO. 22:

Provide documentation (electronic or paper) that Secretary Elaine Chao received an Express Letter from Plaintiff, dated August 1, 2004, alleging continued harassment.

RESPONSE TO REQUEST NO.22 :

The Defendant hereby incorporates the General Objections as if fully stated herein. The Deponent objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain

1 facts and legal conclusions by responding to this request; the Defendant does not concede any
 2 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 3 extent it seeks information protected by the attorney-client privilege, work product protection,
 4 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 5 the extent it seeks information protected by the Privacy Act.

6 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 7 extent documents responsive to this request exist and are within the possession, custody or
 8 control of the Defendant they will be produced.

9 **DOCUMENT REQUEST NO. 23:**

10 Provide documentation (electronic or paper) to demonstrate that Secretary Chao investigated
 11 Plaintiff's aforementioned allegations in Document Request No. 22.

12 **RESPONSE TO REQUEST NO.23 :**

13 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 14 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 15 The Defendant objects to this document request to the extent it assumes the existence of certain
 16 facts and legal conclusions by responding to this request; the Defendant does not concede any
 17 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 18 extent it seeks information protected by the attorney-client privilege, work product protection,
 19 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 20 the extent it seeks information protected by the Privacy Act.

21 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 22 extent documents responsive to this request exist and are within the possession, custody or
 23 control of the Defendant they will be produced.

24 **DOCUMENT REQUEST NO. 24:**

25 From January 1995 to December 2007, provide a copy and a list of ALL COs, by name, Grade,
 26 race, disability, age, basis, and disposition (e.g., arbitrated, settled, litigated, etc.), that have filed
 27 complaints/grievances of discrimination.

1 RESPONSE TO REQUEST NO. 24:

2 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 3 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 4 The Defendant objects to this document request to the extent it assumes the existence of certain
 5 facts and legal conclusions by responding to this request; the Defendant does not concede any
 6 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 7 extent it seeks information protected by the attorney-client privilege, work product protection,
 8 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 9 the extent it seeks information protected by the Privacy Act.

10 Without waiving any of the foregoing objections the Defendant responds as follows: This
 11 request is overbroad in scope because it covers a ten year time period not at issue in this
 12 complaint. Further, the Defendant will not produce the confidential personnel information of
 13 persons other than Plaintiff.

14 DOCUMENT REQUEST NO. 25:

15 Provide copies (electronic or paper) of COs Roberts's and Batiste's memos to ADD Sarah Nelson
 16 chronicling their clandestine meeting with Plaintiff, dated September 9, 2004 and September 10,
 17 2004, respectively.

18 RESPONSE TO REQUEST NO.25 :

19 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 20 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 21 The Defendant objects to this document request to the extent it assumes the existence of certain
 22 facts and legal conclusions by responding to this request; the Defendant does not concede any
 23 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 24 extent it seeks information protected by the attorney-client privilege, work product protection,
 25 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 26 the extent it seeks information protected by the Privacy Act.

27 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 28 extent documents responsive to this request exist and are within the possession, custody or

1 control of the Defendant they will be produced.

2 **DOCUMENT REQUEST NO. 26:**

3 Provide documentation (electronic or paper) to demonstrate that DD Luevano granted COs
4 Batiste and Roberts reasonable accommodations to transfer to another module.

5 **RESPONSE TO REQUEST NO.26 :**

6 The Defendant hereby incorporates the General Objections as if fully stated herein. The
7 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
8 The Defendant objects to this document request to the extent it assumes the existence of certain
9 facts and legal conclusions by responding to this request; the Defendant does not concede any
10 facts or legal conclusions stated therein. The Defendant objects to this document request to the
11 extent it seeks information protected by the attorney-client privilege, work product protection,
12 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
13 the extent it seeks information protected by the Privacy Act.

14 Without waiving any of the foregoing objections the Defendant responds as follows: The
15 Defendant will not produce documents responsive to this request because such documents are
16 privileged and confidential.

17 **DOCUMENT REQUEST NO. 27:**

18 Provide documentation (electronic or paper) to demonstrate that both COs Batiste and Roberts
19 are "qualified individuals" to have received reasonable accommodations to transfer to another
20 module.

21 **RESPONSE TO REQUEST NO. 27:**

22 The Defendant hereby incorporates the General Objections as if fully stated herein. The
23 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
24 The Defendant objects to this document request to the extent it assumes the existence of certain
25 facts and legal conclusions by responding to this request; the Defendant does not concede any
26 facts or legal conclusions stated therein. The Defendant objects to this document request to the
27 extent it seeks information protected by the attorney-client privilege, work product protection,
28 investigative privilege, or any other applicable privilege. The Defendant objects to this request to

1 the extent it seeks information protected by the Privacy Act.

2 Without waiving any of the foregoing objections the Defendant responds as follows: The
 3 Defendant will not produce documents responsive to this request because such documents are
 4 privileged and confidential.

5 **DOCUMENT REQUEST NO. 28:**

6 Provide copies (electronic or paper) of COs Batiste's and Roberts's witness affidavits (Case No.
 7 03-09-171 - E. K. Wade Complaint), dated June 12, 2004 and June 30, 2004, respectively, where
 8 COs Batiste and Roberts swore that neither of them were disabled and neither had ever asked for
 9 nor received an accommodation.

10 **RESPONSE TO REQUEST NO. 28:**

11 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 12 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 13 The Defendant objects to this document request to the extent it assumes the existence of certain
 14 facts and legal conclusions by responding to this request; the Defendant does not concede any
 15 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 16 extent it seeks information protected by the attorney-client privilege, work product protection,
 17 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 18 the extent it seeks information protected by the Privacy Act.

19 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 20 extent documents responsive to this request exist and are within the possession custody or
 21 control of the Defendant these documents will be produced. WADE-CHAO00097-102, WADE-
 22 CHAO02185-2193, WADE-CHAO03888-3897, WADE-CHAO04098.

23 **DOCUMENT REQUEST NO. 29:**

24 Provide a copy of ADD Nelson's Notice of Proposed Suspension for "Use of Offensive
 25 Language" to Plaintiff, dated October 7, 2004.

26 **RESPONSE TO REQUEST NO.29 :**

27 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 28 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.

1 The Defendant objects to this document request to the extent it assumes the existence of certain
 2 facts and legal conclusions by responding to this request; the Defendant does not concede any
 3 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 4 extent it seeks information protected by the attorney-client privilege, work product protection,
 5 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 6 the extent it seeks information protected by the Privacy Act.

7 Without waiving any of the foregoing objections the Defendant responds as follows: WADE-
 8 CHAO04086-4087.

9 **DOCUMENT REQUEST NO. 30:**

10 Provide a copy and a list of ALL GS-9s (Region wide), by name, Grade, race, disability, age, and
 11 completion date that were promoted to GS-11 without having completed a Complaint
 12 Investigation.

13 **RESPONSE TO REQUEST NO. 30:**

14 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 15 Deponent objects to this document request to the extent it is overbroad and unduly burdensome.
 16 The Defendant objects to this document request to the extent it assumes the existence of certain
 17 facts and legal conclusions by responding to this request; the Defendant does not concede any
 18 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 19 extent it seeks information protected by the attorney-client privilege, work product protection,
 20 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 21 the extent it seeks information protected by the Privacy Act.

22 Without waiving any of the foregoing objections the Defendant responds as follows: This
 23 request is overbroad in scope because it fails to define the relevant time period. Further, the

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1 Defendant will not produce the confidential personnel information of persons other than Plaintiff.

2 DATED: July 31, 2008

Respectfully submitted,

3 JOSEPH P. RUSSONIELLO
United States Attorney

4 *Melissa Brown*

5 MELISSA K. BROWN
6 Assistant United States Attorney

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8
9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION

12 E.K. WADE,) Consolidated Case No. C 08-00001 JSW
13 Plaintiff,)
14 v.)
15 ELAINE CHAO, SECRETARY OF)
LABOR, ET AL.)
16 Defendant.)
17)
18)

**THE FEDERAL DEFENDANT'S
RESPONSES TO PLAINTIFF'S
REQUESTS FOR PRODUCTION SET
THREE**

19 PROPOUNDING PARTY: PLAINTIFF, E.K. WADE

20 RESPONDING PARTY: DEFENDANT ELAINE CHAO, SECRETARY OF THE
DEPARTMENT OF LABOR

21 SET NO.: THREE

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1 Pursuant to Rule 34 of the Federal Rules of Civil Procedure, the Defendant Elaine Chao,
 2 Secretary for the Department of Labor ("Defendant") by and through her attorneys, hereby
 3 objects and responds to the Requests for Production Set Three propounded by Plaintiff E.K.
 4 Wade ("Plaintiff").

5 **PRELIMINARY STATEMENT**

6 1. The Federal Defendant has made a diligent search and reasonable inquiry in an effort to
 7 respond to the Request. However, discovery is continuing and the Federal Defendant's
 8 investigation into the facts relating to this litigation is ongoing and incomplete. Accordingly, the
 9 Federal Defendant responds to the Request based on the information presently available to it and
 10 without prejudice to its right to amend or supplement its responses and present evidence that may
 11 hereafter be discovered or become available to it.

12 2. Inadvertent production of any document subject to any applicable privilege or
 13 doctrine, including, but not limited to, the deliberative process privilege, the investigative
 14 privilege, the attorney-client privilege and work product doctrine, is not intended to be, and shall
 15 not operate as, a waiver of any such privilege or doctrine, in whole or in part; nor is any such
 16 inadvertent production intended to be, nor shall it constitute, a waiver of the right to object to any
 17 use of such document, or of the information contained therein.

18 3. The Federal Defendant has made reasonable efforts to respond to the Request, to the
 19 extent it has not been objected to, as the Federal Defendant understand and interpret the Request.
 20 If plaintiff subsequently asserts an interpretation of any request that differs from that of the
 21 Federal Defendant, reserves the right to supplement these objections and responses.

22 4. The Federal Defendant's responses are made without in any way intending to waive or
 23 waiving, but on the contrary, intended to preserve and preserving:

24 (a) The right to raise all questions of authenticity, foundation, relevancy, materiality,
 25 privilege and admissibility as evidence for any purpose of any information identified in response
 26 to the Request that may arise in any subsequent proceeding in, or the trial of, this or any other
 27 action.

- (b) The right to object to the use of these responses in any subsequent proceeding in, or the trial of, this or any other action on any grounds;
- (c) The right to object to the introduction into evidence of these responses; and
- (d) The right to object on any ground at any time to the other requests for production or other discovery involving the subject matter thereof.

GENERAL OBJECTIONS

The Defendant asserts the following objections to each request contained in the Request:

- A. The Defendant objects to each request to the extent it seeks documents that are not relevant to the claim or defense of any party, or that otherwise exceed the bounds of discovery set forth in Federal Rule of Civil Procedure 26.
 - B. The Defendant objects to each request to the extent it is vague, ambiguous, compound, and/or unintelligible.
 - C. The Defendant objects to each request to the extent it is repetitive, overly broad, and/or unduly burdensome.
 - D. The Defendant objects to each request to the extent it seeks documents protected by any applicable privilege, including attorney-client privilege, government privileges such as the deliberative process privilege, and the work product doctrine.
 - E. The Defendant objects to each request to the extent it seeks documents that are confidential and/or private.
 - F. The Defendant objects to each request to the extent it seeks documents that are protected from disclosure by any applicable statute (including the Privacy Act 5 U.S.C. § 552a), regulation or law, or the Constitution.
 - G. The Defendant objects to each request to the extent it seeks documents not in its possession, custody, or control.
 - H. The Defendant objects to each request to the extent it seeks documents in plaintiff's possession, custody, or control, documents already produced to plaintiff, and/or documents equally available to plaintiff from third parties.

- 1 I. The Defendant objects to each request to the extent it lacks foundation/assumes facts not
2 in evidence.
- 3 J. The Defendant objects to each request to the extent it calls for a legal conclusion.
- 4 K. By making these responses or agreeing to produce any documents, the Defendant does not
5 concede the documents are discoverable or the request is proper, or that the information
6 sought is relevant. Further, by stating in these responses that they will produce
7 documents, the Defendant does not represent that any document actually exists, but rather
8 that the Defendant will make a reasonable, good faith search and attempt to ascertain
9 whether any responsive documents do, in fact, exist.
- 10 L. The Defendant reserves the right to amend or supplement these responses.
- 11 M. Except for explicit facts admitted herein, no admissions of any nature whatsoever are
12 implied or should be inferred from these objections and responses.
- 13 N. The Defendant incorporates all of the above objections into each response below. By
14 raising any similar or different objections below, the Federal Defendant does not waive
15 any of its general objections.

CONDITIONS

- 17 1. This response is made without in any way waiving or intending to waive, but on the
18 contrary, intending to preserve:
 - 19 a) All objections as to competency, relevancy, materiality, privilege and
20 admissibility as evidence for any purpose in subsequent proceedings or the trial of this or any
21 other actions;
 - 22 b) The right to object to the use of any information which may be provided, or the
23 subject matter thereof, in any subsequent proceedings or the trial of this or any other action on
24 any other grounds;
 - 25 c) The right to object on any ground at any time to further discovery proceedings
26 involving or relating to the subject matter of these requests; and
 - 27 d) The right at any time to revise, correct, supplement, clarify or amend this response

1 in accordance with the Federal Rules of Civil Procedure.

2 2. All responses to Requests for Production are based on Defendant's best understanding of
 3 the Requests and/or the terms used therein. Such responses cannot properly be used as evidence
 4 except in the context in which the Defendant understood the Requests and/or the terms used
 5 therein.

6 3. These responses are not a representation or concession as to the relevance and/or
 7 relationship of the information to this action.

RESPONSES TO DOCUMENT REQUESTS

DOCUMENT REQUEST NO. 1:

10 Provide a copy of Plaintiff's file (electronic or paper) to include personnel actions, denials of
 11 promotion, grants of promotion, and disciplinary actions, to include the racist/sexiest email from
 12 CO Jesus Alvarez, and all in its completeness.

RESPONSE TO REQUEST NO. 1:

14 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 15 Defendant objects to this request as vague and ambiguous to the extent it cannot identify "the
 16 racist/sexiest email from CO Jesus Alvarez" without some description of the contents of the
 17 email and date. Moreover, the Defendant will not produce confidential personnel information for
 18 other persons. The Defendant objects to this document request to the extent it assumes the
 19 existence of certain facts and legal conclusions by responding to this request; the Defendant does
 20 not concede any facts or legal conclusions stated therein. The Defendant objects to this
 21 document request to the extent it seeks information protected by the attorney-client privilege,
 22 work product protection, investigative privilege, or any other applicable privilege. The
 23 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

24 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 25 extent such documents exist and are not covered by a privilege they will be produced.

DOCUMENT REQUEST NO. 2:

27 Provide documentation (electronic or paper) of the standards for merit-pay promotion to GS-11

1 and GS-12 respectively.

2 **RESPONSE TO REQUEST NO. 2:**

3 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 4 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 5 The Defendant objects to this document request to the extent it assumes the existence of certain
 6 facts and legal conclusions by responding to this request; the Defendant does not concede any
 7 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 8 extent it seeks information protected by the attorney-client privilege, work product protection,
 9 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 10 the extent it seeks information protected by the Privacy Act.

11 Without waiving any of the foregoing objections the Defendant responds as follows: To the
 12 extent such documents exist and are not covered by a privilege they will be produced.

13 **DOCUMENT REQUEST NO. 3:**

14 Provide documentation (electronic or paper) to demonstrate that Plaintiff was required to find
 15 systemic discrimination before being considered for a merit-pay promotion to GS-12.

16 **RESPONSE TO REQUEST NO. 3:**

17 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 18 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 19 The Defendant objects to this document request to the extent it assumes the existence of certain
 20 facts and legal conclusions by responding to this request; the Defendant does not concede any
 21 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 22 extent it seeks information protected by the attorney-client privilege, work product protection,
 23 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 24 the extent it seeks information protected by the Privacy Act. The Defendant objects to this
 25 request as vague and ambiguous as it is unclear what is intended by the phrase "demonstrate that
 26 Plaintiff was required to find systemic discrimination."

27 Without waiving any of the foregoing objections the Defendant responds as follows: As the
 28

1 Defendant understands and interprets this request to be a request for policies and procedures
 2 related to promotion and to the extent such documents exist and are not covered by a privilege
 3 they will be produced.

4 **DOCUMENT REQUEST NO. 4:**

5 Provide documentation (electronic or paper) to demonstrate that Defendant provided Plaintiff
 6 with systemic discrimination training.

7 **RESPONSE TO REQUEST NO. 4:**

8 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 9 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 10 The Defendant objects to this document request to the extent it assumes the existence of certain
 11 facts and legal conclusions by responding to this request; the Defendant does not concede any
 12 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 13 extent it seeks information protected by the attorney-client privilege, work product protection,
 14 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 15 the extent it seeks information protected by the Privacy Act.

16 Without waiving any of the foregoing objections the Defendant responds as follows: These
 17 documents will be produced. Please see bates range WADE-CHAO00009-27, WADE-
 18 CHAO00065-69, WADE-CHAO000076-77, WADE-CHAO000124-125, WADE-
 19 CHAO000152-160, WADE-CHAO000201, WADE-CHAO000389-390, please also see
 20 divisions within the materials: Training and Feedback.

21 **DOCUMENT REQUEST NO. 5:**

22 Provide documentation (electronic or paper) to demonstrate that Defendant provided Plaintiff
 23 with statistical analysis training.

24 **RESPONSE TO REQUEST NO. 5:**

25 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 26 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 27 The Defendant objects to this document request to the extent it assumes the existence of certain

1 facts and legal conclusions by responding to this request; the Defendant does not concede any
 2 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 3 extent it seeks information protected by the attorney-client privilege, work product protection,
 4 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 5 the extent it seeks information protected by the Privacy Act.

6 Without waiving any of the foregoing objections the Defendant responds as follows: These
 7 documents will be produced. Please see bates range WADE-CHAO00009-27, WADE-
 8 CHAO000065-69, WADE-CHAO000076-77, WADE-CHAO000124-125, WADE-
 9 CHAO000152-160, WADE-CHAO000201, WADE-CHAO000389-390, please also see
 10 divisions within the materials: Training and Feedback.

11 **DOCUMENT REQUEST NO. 6:**

12 Provide documentation (electronic or paper) to demonstrate that COs Batiste, Roberts, Alvarez,
 13 Pursley, Smith, or ADD Martin found systemic discrimination before being promoted to GS-12,
 14 to include applicable dates.

15 **RESPONSE TO REQUEST NO. 6:**

16 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 17 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 18 The Defendant objects to this document request to the extent it assumes the existence of certain
 19 facts and legal conclusions by responding to this request; the Defendant does not concede any
 20 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 21 extent it seeks information protected by the attorney-client privilege, work product protection,
 22 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 23 the extent it seeks information protected by the Privacy Act. The Defendant objects to this
 24 request because it seeks the confidential personnel information of persons other than Plaintiff.
 25 Accordingly, the Defendant will not produce documents responsive to this request.

26 **DOCUMENT REQUEST NO. 7:**

27 Provide documentation (electronic or paper) to demonstrate that Defendant DD Luevano and

1 ADD Martin granted COs Batiste and Roberts reasonable accommodations to transfer to another
 2 module.

3 **RESPONSE TO REQUEST NO. 7:**

4 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 5 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 6 The Defendant objects to this document request to the extent it assumes the existence of certain
 7 facts and legal conclusions by responding to this request; the Defendant does not concede any
 8 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 9 extent it seeks information protected by the attorney-client privilege, work product protection,
 10 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 11 the extent it seeks information protected by the Privacy Act. The Defendant objects to this
 12 request because it seeks the confidential personnel information of persons other than Plaintiff.
 13 Accordingly, the Defendant will not produce documents responsive to this request.

14 **DOCUMENT REQUEST NO. 8:**

15 Provide documentation (electronic or paper) to demonstrate that COs Batiste and Roberts have
 16 known disabilities.

17 **RESPONSE TO REQUEST NO. 8:**

18 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 19 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 20 The Defendant objects to this document request to the extent it assumes the existence of certain
 21 facts and legal conclusions by responding to this request; the Defendant does not concede any
 22 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 23 extent it seeks information protected by the attorney-client privilege, work product protection,
 24 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 25 the extent it seeks information protected by the Privacy Act. The Defendant objects to this
 26 request because it seeks the confidential personnel information of persons other than Plaintiff.
 27 Accordingly, the Defendant will not produce documents responsive to this request.

DOCUMENT REQUEST NO. 9:

Provide documentation (electronic or paper) to demonstrate that Defendant offered Plaintiff reasonable accommodations to transfer and Plaintiff denied them.

RESPONSE TO REQUEST NO. 9:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Defendant objects to this document request to the extent it is overbroad and unduly burdensome with respect to time. Specifically, the Plaintiff has not defined a relevant time period regarding this request or any other request. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act. The Defendant objects to this request as vague and ambiguous with respect to the term "reasonable accommodation."

Without waiving the forgoing objections the Defendant responds as follows: To the extent such documents exist they will be produced.

DOCUMENT REQUEST NO. 10:

Provide documentation (electronic or paper) to demonstrate that, on June 12, 2004 and June 30, 2004, respectively, COs Batiste and Roberts swore that neither was disabled and neither had asked for reasonable accommodations.

RESPONSE TO REQUEST NO.10:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Defendant objects to this document request to the extent it is overbroad and unduly burdensome. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the

1 extent it seeks information protected by the attorney-client privilege, work product protection,
 2 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 3 the extent it seeks information protected by the Privacy Act. This request is vague and
 4 ambiguous because the Plaintiff has failed to define the term "swore" or to explain any context
 5 for the alleged statements.

6 Without waiving the foregoing objections, the Defendant responds as follows: Because this
 7 request is vague and ambiguous, the Defendant is left to interpret this request and based upon its
 8 interpretation and to the extent such documents exist they will be produced. Please see bates
 9 range WADE-CHAO02716-2724.

10 **DOCUMENT REQUEST NO. 11:**

11 Provide documentation (electronic or paper) to demonstrate that, from July 16, 2002 to August
 12 16, 2003, under ADD Martin's supervision, Plaintiff's case closure production was in the top 5,
 13 bypassing 5 other GS-12s with 24 cases - 19 Supply & Service and 5 Construction.

14 **RESPONSE TO REQUEST NO. 11:**

15 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 16 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 17 The Defendant objects to this document request to the extent it assumes the existence of certain
 18 facts and legal conclusions by responding to this request; the Defendant does not concede any
 19 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 20 extent it seeks information protected by the attorney-client privilege, work product protection,
 21 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 22 the extent it seeks information protected by the Privacy Act. The Defendant objects to this
 23 request as vague and ambiguous.

24 Without waiving the foregoing objections, the Defendant responds as follows: To the extent
 25 responsive documents exist those documents will be produced.

26 **DOCUMENT REQUEST NO. 12:**

27 Provide documentation (electronic or paper) to demonstrate that Defendant processed Plaintiff's

1 3 requests for reasonable accommodations.

2 **RESPONSE TO REQUEST NO. 12:**

3 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 4 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 5 The Defendant objects to this document request to the extent it assumes the existence of certain
 6 facts and legal conclusions by responding to this request; the Defendant does not concede any
 7 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 8 extent it seeks information protected by the attorney-client privilege, work product protection,
 9 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 10 the extent it seeks information protected by the Privacy Act. The Defendant objects to this
 11 request as vague and ambiguous as Plaintiff has provided no context for these documents and has
 12 not defined the relevant time period. Further this request is vague and ambiguous with respect to
 13 the term "processed."

14 Without waiving the forgoing objections, the Defendant responds as follows: The
 15 Defendant does not concede that any documents produced in response to this request were
 16 requests for reasonable accommodation. Please see the following bates ranges: WADE-
 17 CHAO000244, WADE-CHAO000273-283, WADE-CHAO000405-414, WADE-CHAO000417-
 18 426, WADE-CHAO001020-1048, WADE-CHAO001242-44 please also see divisions Sick
 19 Leave.

20 **DOCUMENT REQUEST NO. 13:**

21 Provide documentation (electronic or paper) to demonstrate that Plaintiff lacked statistical
 22 analysis writing skills.

23 **RESPONSE TO REQUEST NO. 13:**

24 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 25 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 26 The Defendant objects to this document request to the extent it assumes the existence of certain
 27 facts and legal conclusions by responding to this request; the Defendant does not concede any

1 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 2 extent it seeks information protected by the attorney-client privilege, work product protection,
 3 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 4 the extent it seeks information protected by the Privacy Act.

5 Without waiving the foregoing objections, the Defendant responds as follows: To the
 6 extent responsive documents exist those documents will be produced. Please see bates range
 7 WADE-CHAO00009-27, WADE-CHAO000065-69, WADE-CHAO000076-77, WADE-
 8 CHAO000124-125, WADE-CHAO000152-160, WADE-CHAO000201, WADE-CHAO000389-
 9 390, WADE-CHAO 000205-210, WADE-CHAO00218-219, WADE-CHAO00103-109,
 10 WADE-CHAO00161-166, WADE-CHAO00478, WADE-CHAO00194-198, WADE-
 11 CHAO00517-588, please also see divisions within the materials Feedback, Step-1 Grievance,
 12 Step-2 Grievance, Training.

13 **DOCUMENT REQUEST NO. 14:**

14 Provide documentation (electronic or paper) to demonstrate that Plaintiff was not entitled to
 15 Advanced Sick Leave of 160 hours.

16 **RESPONSE TO REQUEST NO. 14:**

17 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 18 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 19 This request is overbroad with respect to time because the Plaintiff has not defined the relevant
 20 time period. The Defendant objects to this document request to the extent it assumes the
 21 existence of certain facts and legal conclusions by responding to this request; the Defendant does
 22 not concede any facts or legal conclusions stated therein. The Defendant objects to this
 23 document request to the extent it seeks information protected by the attorney-client privilege,
 24 work product protection, investigative privilege, or any other applicable privilege. The
 25 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

26 Without waiving the foregoing objections, the Defendant responds as follows: To the
 27 extent responsive documents exist those documents will be produced. Please see bates range
 28

1 WADE-CHAO00244 and divisions sick leave, Worker's Compensation, EEOC.

2 **DOCUMENT REQUEST NO. 15:**

3 Provide documentation (electronic or paper) to demonstrate that Plaintiff was not qualified for
4 promotion to GS-12.

5 **RESPONSE TO REQUEST NO. 15:**

6 The Defendant hereby incorporates the General Objections as if fully stated herein. The
7 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
8 This request is overbroad with respect to time because the Plaintiff has not defined the relevant
9 time period. The Defendant objects to this document request to the extent it assumes the
10 existence of certain facts and legal conclusions by responding to this request; the Defendant does
11 not concede any facts or legal conclusions stated therein. The Defendant objects to this
12 document request to the extent it seeks information protected by the attorney-client privilege,
13 work product protection, investigative privilege, or any other applicable privilege. The
14 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

15 Without waiving the foregoing objections, the Defendant responds as follows: To the extent
16 responsive documents exist those documents will be produced. Please see bates range WADE-
17 CHAO00001-3, WADE-CHAO00103-109, WADE-CHAO00161-166, WADE-CHAO00478.
18 please also see divisions within documents, GS-12 Promotion, EEOC, Litigation.

19 **DOCUMENT REQUEST NO. 16:**

20 Provide documentation (electronic or paper) to demonstrate that Defendant made a good faith
21 effort to timely promote Plaintiff to GS-12.

22 **RESPONSE TO REQUEST NO. 16:**

23 The Defendant hereby incorporates the General Objections as if fully stated herein. The
24 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
25 This request is overbroad with respect to time because the Plaintiff has not defined the relevant
26 time period. The Defendant objects to this document request to the extent it assumes the
27 existence of certain facts and legal conclusions by responding to this request; the Defendant does

1 not concede any facts or legal conclusions stated therein. The Defendant objects to this
 2 document request to the extent it seeks information protected by the attorney-client privilege,
 3 work product protection, investigative privilege, or any other applicable privilege. The
 4 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

5 Without waiving the foregoing objections, the Defendant responds as follows: To the extent
 6 responsive documents exist those documents will be produced. Please see bates range WADE-
 7 CHAO00103-109, WADE-CHAO00161-166, WADE-CHAO00478, please also see divisions
 8 within documents GS-12 Promotion, EEOC, Litigation.

9 **DOCUMENT REQUEST NO. 17:**

10 Provide documentation (electronic or paper) to demonstrate that Defendant made a good faith
 11 effort to grant Plaintiff Advanced Sick Leave of 160 hours.

12 **RESPONSE TO REQUEST NO. 17:**

13 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 14 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 15 This request is overbroad with respect to time because the Plaintiff has not defined the relevant
 16 time period. The Defendant objects to this document request to the extent it assumes the
 17 existence of certain facts and legal conclusions by responding to this request; the Defendant does
 18 not concede any facts or legal conclusions stated therein. The Defendant objects to this
 19 document request to the extent it seeks information protected by the attorney-client privilege,
 20 work product protection, investigative privilege, or any other applicable privilege. The
 21 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

22 Without waiving the forgoing objections, the Defendant responds as follows: The
 23 Defendant does not concede that any documents produced in response to this request were
 24 requests for reasonable accommodation. Please see the following bates ranges: WADE-
 25 CHAO000244, WADE-CHAO000273-283, WADE-CHAO000405-414, WADE-CHAO000417-
 26 426, WADE-CHAO001020-1048, WADE-CHAO001242-44.

DOCUMENT REQUEST NO. 18:

Provide documentation (electronic or paper) to demonstrate that Defendant made a good faith effort to provide Plaintiff with reasonable accommodations to transfer to another module.

RESPONSE TO REQUEST NO. 18:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Defendant objects to this document request to the extent it is overbroad and unduly burdensome. This request is overbroad with respect to time because the Plaintiff has not defined the relevant time period. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving the forgoing objections, the Defendant responds as follows: The Defendant contends that Plaintiff was not entitled to a reasonable accommodation, in the form of a transfer to another module, if at all, however, to the extent responsive documents exist they will be produced.

DOCUMENT REQUEST NO. 19:

Provide documentation (electronic or paper) to demonstrate that Defendant made a good faith effort to address ALL of Plaintiff's complaints and/or grievances.

RESPONSE TO REQUEST NO. 19:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Defendant objects to this document request to the extent it is overbroad and unduly burdensome. The Plaintiff must identify at a minimum a time period with respect to "complaints and grievances." Further, the request is vague and ambiguous because the Plaintiff has not identified which "complaints and grievances" to which he is referring and whether he seeks documents related only to formal complaints or grievances. Further, Plaintiff has been provided with the

1 Administrative file and/or Report of Investigations as they relate to his formal complaints and
 2 grievances. The Defendant objects to this document request to the extent it assumes the
 3 existence of certain facts and legal conclusions by responding to this request; the Defendant does
 4 not concede any facts or legal conclusions stated therein. The Defendant objects to this
 5 document request to the extent it seeks information protected by the attorney-client privilege.
 6 work product protection, investigative privilege, or any other applicable privilege. The
 7 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

8 Without waiving the foregoing objections, the Defendant responds as follows: The
 9 Defendant has interpreted this request to refer only to formal complaints and/or grievances filed
 10 by the Plaintiff. To the extent such documents exist and are within the possession, custody and
 11 control of Defendant they will be produced. Please see the divisions within the documents titled
 12 EEOC, Step 1, Step 2, Litigation, and documents identified as initial disclosure.

13 **DOCUMENT REQUEST NO. 20:**

14 Provide documentation (electronic or paper) to demonstrate that CO Richard Gaytan was denied
 15 promotion to GS-11, to include Defendant's basis.

16 **RESPONSE TO REQUEST NO. 20:**

17 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 18 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 19 The Defendant objects to this document request to the extent it assumes the existence of certain
 20 facts and legal conclusions by responding to this request; the Defendant does not concede any
 21 facts or legal conclusions stated therein. The Defendant objects to this document request to the
 22 extent it seeks information protected by the attorney-client privilege, work product protection,
 23 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
 24 the extent it seeks information protected by the Privacy Act. The Defendant objects to this
 25 request because it seeks the confidential personnel information of persons other than Plaintiff.
 26 Accordingly, the Defendant will not produce documents responsive to this request.

27

28 DEFENDANT'S OBJECTIONS AND RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS SET
 THREE
 C08-00001 JSW

DOCUMENT REQUEST NO. 21:

Provide documentation (electronic or paper) to demonstrate that Plaintiff was promoted to GS-11 when he had not found systemic discrimination and had no statistical analysis writing issues.

RESPONSE TO REQUEST NO. 21:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Defendant objects to this document request to the extent it is overbroad and unduly burdensome. This request is overbroad with respect to time because the Plaintiff has not defined the relevant time period. The Defendant objects to this document request to the extent it assumes the existence of certain facts and legal conclusions by responding to this request; the Defendant does not concede any facts or legal conclusions stated therein. The Defendant objects to this document request to the extent it seeks information protected by the attorney-client privilege, work product protection, investigative privilege, or any other applicable privilege. The Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

Without waiving the forgoing objections the Defendant responds as follows: It is the Defendant's position that documents directly responsive to Plaintiff's request do not exist because of the legal conclusions incorporated within Plaintiff's request, however, see bates range WADE-CHAO 000205-210, WADE-CHAO00218-219, also please see the divisions within the documents Promotion to GS-11, Feedback, as well as, documents identified as initial disclosures.

DOCUMENT REQUEST NO. 22:

Provide documentation (electronic or paper) to demonstrate that Plaintiff was not promoted to GS-12 because he had not found systemic discrimination and/or had statistical analysis writing issues.

RESPONSE TO REQUEST NO. 22:

The Defendant hereby incorporates the General Objections as if fully stated herein. The Defendant objects to this document request to the extent it is overbroad and unduly burdensome. This request is overbroad with respect to time because the Plaintiff has not defined the relevant time period. The Defendant objects to this document request to the extent it assumes the

1 existence of certain facts and legal conclusions by responding to this request; the Defendant does
 2 not concede any facts or legal conclusions stated therein. The Defendant objects to this
 3 document request to the extent it seeks information protected by the attorney-client privilege,
 4 work product protection, investigative privilege, or any other applicable privilege. The
 5 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

6 Without waiving the forgoing objections the Defendant responds as follows: It is the
 7 Defendant's position that documents directly responsive to Plaintiff's request do not exist
 8 because of the legal conclusions incorporated within Plaintiff's request, however, please see
 9 physical divisions Promotion GS-12, EEOC, Feedback, Step-1, and documents identified as
 10 initial disclosures.

11 **DOCUMENT REQUEST NO. 23:**

12 Provide documentation (electronic or paper) to demonstrate that Plaintiff was promoted to the
 13 GS-11 grade using the same statistical analysis writing skills which prompted Defendant's denial
 14 of Plaintiff's promotion to GS-12.

15 **RESPONSE TO REQUEST NO. 23:**

16 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 17 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 18 This request is overbroad with respect to time because the Plaintiff has not defined the relevant
 19 time period. The Defendant objects to this document request to the extent it assumes the
 20 existence of certain facts and legal conclusions by responding to this request; the Defendant does
 21 not concede any facts or legal conclusions stated therein. The Defendant objects to this
 22 document request to the extent it seeks information protected by the attorney-client privilege,
 23 work product protection, investigative privilege, or any other applicable privilege. The
 24 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.

25 Without waiving the forgoing objections the Defendant responds as follows: It is the
 26 Defendant's position that documents directly responsive to Plaintiff's request do not exist
 27 because of the legal conclusions incorporated within Plaintiff's request, however, to the extent
 28

1 related documents may exist please see physical divisions Promotion GS-11, Promotion GS-12,
 2 EEOC, Feedback, Step-1, and documents identified as initial disclosures.

3 **DOCUMENT REQUEST NO. 24:**

4 Provide documentation (electronic or paper) to demonstrate that statistical analysis used by COs
 5 at the GS-9, GS-11 or GS-12 must meet a certain criteria.

6 **RESPONSE TO REQUEST NO. 24:**

7 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 8 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.
 9 This request is overbroad with respect to time because the Plaintiff has not defined the relevant
 10 time period. The Defendant objects to this document request to the extent it assumes the
 11 existence of certain facts and legal conclusions by responding to this request; the Defendant does
 12 not concede any facts or legal conclusions stated therein. The Defendant objects to this
 13 document request to the extent it seeks information protected by the attorney-client privilege,
 14 work product protection, investigative privilege, or any other applicable privilege. The
 15 Defendant objects to this request to the extent it seeks information protected by the Privacy Act.
 16 Further the Defendant objects to this document request as vague and ambiguous.

17 Without waiving the forgoing objections the Defendant responds as follows: Subject to
 18 the Defendant's interpretation of this request and to the extent responsive documents exist those
 19 documents will be produced.

20 **DOCUMENT REQUEST NO. 25:**

21 Provide documentation (electronic or paper) to demonstrate that ADD Georgia Martin (GS-13),
 22 Ron Hiraga (GS-13), Alonzo Salazar (GS-13), or Deanna Pursley (GS-13) ever found systemic
 23 discrimination at the GS-9, GS-11, or GS-12 grade, to include names of contractors and dates
 24 found.

25 **RESPONSE TO REQUEST NO.25:**

26 The Defendant hereby incorporates the General Objections as if fully stated herein. The
 27 Defendant objects to this document request to the extent it is overbroad and unduly burdensome.

1 The Defendant objects to this document request to the extent it assumes the existence of certain
2 facts and legal conclusions by responding to this request; the Defendant does not concede any
3 facts or legal conclusions stated therein. The Defendant objects to this document request to the
4 extent it seeks information protected by the attorney-client privilege, work product protection,
5 investigative privilege, or any other applicable privilege. The Defendant objects to this request to
6 the extent it seeks information protected by the Privacy Act. The Defendant objects to this
7 request because it seeks the confidential personnel information of persons other than Plaintiff.
8 Accordingly, the Defendant will not produce documents responsive to this request.

9

10 DATED: July 31, 2008

Respectfully submitted,

11 JOSEPH P. RUSSONIELLO
United States Attorney

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14 MELISSA K. BROWN
Assistant United States Attorney

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7 Attorneys for Defendant

8 UNITED STATES DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA
 10 SAN FRANCISCO DIVISION

E.K. WADE,	}	No. C 08-0001 JSW
Plaintiff,	}	
vs.	}	PROOF OF SERVICE
ELAINE CHAO, Secretary of the	}	
Department of Labor,		
Defendant.)	

17 The undersigned hereby certifies that she is an employee of the Office of the United States
 18 Attorney for the Northern District of California and is a person of such age and discretion to be
 19 competent to serve papers. The undersigned further certifies that on **July 31, 2008** she caused a
 20 copy of:

21 THE FEDERAL DEFENDANT'S AMENDED RESPONSES TO
 22 PLAINTIFF'S REQUESTS FOR PRODUCTION SET ONE

23 THE FEDERAL DEFENDANT'S AMENDED RESPONSES TO
 24 PLAINTIFF'S REQUESTS FOR PRODUCTION SET TWO

25 THE FEDERAL DEFENDANT'S AMENDED RESPONSES TO
 PLAINTIFF'S REQUESTS FOR PRODUCTION SET THREE

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28 //

1 to be served by U.S. Mail upon the person at the place and address(es) stated below,
2 which is the last known address:

3 E.K. WADE
4 542 North Civil Drive, Apt. D
Walnut Creek, CA 94597

5 I declare under penalty of perjury under the laws of the United States that the foregoing is
6 true and correct.

7
8 Dated: July 31, 2008

9 
10 BETH MARGENT
Legal Technician

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